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Typical Investigative Situations of the Initial Stage of the Investigation Legalisation (Laundering of Property Obtained as a Result of Tax Evasion)

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Abstract

Based on an analysis of the macroeconomic situation in Ukraine, it is evident that the shadow sector of the national economy is intensifying. Its fictitious component has acquired a global scale, which consists in the withdrawal of significant financial resources from the legal economic sector by illegal means, the redistribution of billions of dollars in profits in favour of individual business entities, and the outflow of capital abroad, which determines the relevance of this study. The purpose of the study is to establish typical investigative situations of the initial stage of investigation of legalisation (laundering of property obtained as a result of committing a tax crime). A system of general scientific and special research methods was used to achieve this goal, the main of which are comparative, comparative legal, logical and legal, statistical, and modelling. Typical investigative situations were systematised (depending on the established initial information, its nature and specifics regarding the number and reliability of data containing verification materials at the stage of entering information in the Unified Register of pre-trial investigations; procedural consequences of entering information in the Unified Register of pre-trial investigations related to the identification of the person who committed the crime; characteristics of sources of initial information about the crime, and the degree of awareness of interested persons about the progress and prospects of the investigation; degree of validity and volume of collected evidence regarding the predicate crime and the areas of investigation and the algorithm for conducting procedural actions inherent in each stage in different investigative situations were proposed. It is established that investigative situations at the initial stage affect the definition of the tasks of investigation of legalisation (laundering of property obtained as a result of tax evasion: establishing the event, method and subject of a criminal offence; identifying and exposing the persons who committed it; determining the nature and amount of damage caused by a criminal offence; identifying and procedurally consolidating traces of a crime; establishing links between tax evasion and other offences; identifying the causes and conditions that contributed to the commission of illegal acts (with a legal response to their elimination. The obtained results will help optimise the initial stage of investigation of crimes of this category and eliminate threats to the economic security of the state related to the sphere of taxation

Keywords:

tax crime; economic security; criminal proceedings; shadow economy; investigative (search procedure

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Introduction

The instability of the macroeconomic situation in Ukraine and periodic crisis conditions in the economy contribute to the establishment of a strong shadow sector in the national economy. Its fictitious component has now acquired a global scale, which consists in the withdrawal of significant financial resources from the legal economic sector by illegal means, the redistribution of billions of dollars in profits in favour of individual business entities, and the outflow of capital abroad, as indicated by the reporting data of the state financial monitoring service of Ukraine [1]. These trends lead to an increase in the threat to the economic security of the state, the aggravation of the existing socio-economic crisis. Such crisis states have not spared the sphere of taxation.

Taxes and fees (mandatory payments) are the most important instrument of the state, established by the highest legislative body that guarantee the existence of society, which are paid by individuals and legal entities, and on which the further development of the Ukrainian economy depends. The problem of legalisation (laundering) of property obtained as a result of tax evasion became particularly important for Ukraine at the beginning of the 21st century in the context of the development of shadow schemes, the emergence of offshore zones, the invention of sophisticated tax evasion schemes that negatively affect both the development of the economy and the implementation of international programmes.

A separate block of studies by foreign and Ukrainian researchers is devoted to the issues of legislative regulation of certain stages of investigation and counteraction to crimes of this category [2; 3; 4], building models of countering the shadow economy [5; 6], determining its criminal characteristics [7] and indicators [8], improving the effectiveness of its assessment [9]. In the context of this research, the best practices concerning the methodology of financial investigations in the field of countering the legalisation of criminal proceeds [10; 11] and forensic support for the activities of relevant subjects of the investigation process [12], are worthy of attention.

Determining the stages of investigation of legalisation (laundering) of property obtained as a result of tax evasion, among other things, was facilitated by studies that reveal the algorithm for determining factors of economic shadowing [13], methods of committing financial transactions of a criminal nature in this area [14]

These and other researchers have made a sufficient contribution to the theory and practice of investigating criminal offences in the sphere of economic activity, and have created a significant basis for further research. However, typical investigative situations of the initial stage of the investigation of legalisation (laundering) of property obtained as a result of tax evasion were not identified and considered, which determines the need for additional, in-depth and comprehensive research.

The scientific originality of the results obtained lies in the fact that this study comprehensively, using

modern methods of cognition and the practice of law enforcement agencies of Ukraine, considers typical investigative situations in the investigation of legalisation (laundering) of property obtained as a result of tax evasion.

The purpose of the study is to define typical investigative situations of the initial stage of investigation of legalisation (laundering) of property obtained as a result of tax evasion. Achieving the goal involves the implementation of a number of *tasks*, within the framework of which it is necessary to outline the specifics of the development and content of these situations, based on which to formulate their classification groups and establish the range of tactical operations that are carried out during the investigation of crimes of this category.

Materials and Methods

The methodological basis of the study is the dialectical and materialistic method of scientific knowledge, general scientific and special methods of legal science, in particular: *comparative and comparative legal method* – for a comprehensive analysis of Ukrainian legislation and bylaws, analysis of the opinions of researchers and practitioners on the issues under study, which form the basis of research; *logical and legal method, methods of induction and deduction, modelling* – to establish similarities in the features and properties of technologies for committing criminal illegal activities in the field of taxation and in its mechanism, highlighting typical investigative situations, and in the methods and means of investigation, tactics of conducting investigative (search) actions; *statistical* – to analyse the studied materials of criminal proceedings, investigative, prosecutorial, and judicial practice.

These methods were used at all stages of the study, which include: defining a scientific problem, setting the purpose and objectives of the study; detailing the content of the mechanism of marking formation; determining the essence of legalisation (laundering) of property obtained as a result of tax evasion, specifying typical investigative situations of the initial stage of investigation of such crimes, and the actions of the investigator to solve them.

The empirical basis of the study consists of systematised reporting data of the State Financial Monitoring Service of Ukraine [1], statistical information of the Prosecutor General's Office of Ukraine [15], and analytical reviews on the accounting and statistical work of the state judicial administration of Ukraine for 2019–2020 [16].

Results and Discussion

At various times, the forensic literature has attempted to develop a system of typical investigative situations for the investigation of certain types of crimes, including economic ones. According to some authors, various crimes in the economic sphere generally form three typical situations at the initial stage of Investigation.

At the same time, the criterion for their allocation is not only the volume and content of initial information, but also the awareness of interested parties about the course and results of the investigation, and the possibility of using the “surprise factor” by the investigator [17, p. 12].

Problematic situations of investigation of tax crimes are primarily related to overcoming the limited information about the event of a criminal offence when it is detected and the identity of the criminal. Systematisation of situations of the initial stage of investigation of tax criminal offences provides information and organisational and methodological support when building a methodology for their investigation. Their proper assessment allows the investigator to navigate the available factual data, form plausible versions, outline a set of procedural actions, and determine their optimal set and sequence.

According to V. Kyrychenko and V. Pahomov [18], the situations of the initial stage of investigation of tax crimes carry the main informational and organisational-methodological load when constructing the methodology for their investigation. Their proper assessment allows the investigator to navigate the available factual data, put forward plausible versions, outline a set of investigative and operational search measures, and determine their optimal set and sequence [18].

Considering the above, it is necessary to characterise the specifics of the establishment, content, and highlight typical situations of the investigation of legalisation (laundering) of property, received as a result of tax evasion.

Firstly, it is advisable to identify typical situations, each of which corresponds to the availability of information contained in the data entered in the Unified Register of pre-trial investigations (URPI)¹, in particular:

1) materials of intelligence-gathering activities contain all the necessary data on the circumstances of the crime;

2) initial data is insufficient to enter information in the URPI²;

3) available data display criminal illegal signs, but the subject of the commission, its motive and purpose are unknown (for example, identifying the fact of submitting false information to the tax authorities; identifying signs of fictitiousness in the activities of a business entity) [19];

4) materials do not contain sufficient data to enter information in the URPI³ (for example, after the destruction of documents for recording the activities of the business entity; the inability to conduct documentary checks, etc.);

5) materials indicate that there is no *corpus delicti* in the actions of business entity officials (accounting error, incorrect accounting, etc.).

Depending on the amount and content of information that primary materials contain at the stage of implementation of verification materials, V. V. Lysenko suggests identifying three situations, in particular: “materials contain the necessary data on the circumstances of the commission of a crime, but they are not enough to initiate a criminal case, which requires further verification; materials do not contain the necessary data on the circumstances of the crime, based on which a decision is made to initiate a criminal case, and they cannot be supplemented during additional verification measures or pre-trial investigation; materials indicate the absence of *corpus delicti* in the actions of business entity officials” [12, p. 297–298; 20, p. 150]. However, in the context of fundamental changes in the criminal procedure legislation, such situations are outdated.

Secondly, considering the procedural consequences of entering information in the URPI⁴, it is advisable to distinguish two situations of the initial stage of the investigation. The first situation includes cases where the source information contains data about the person who committed the crime. According to the data, situations of entering information in the URPI⁵ in relation to a specific person(s) occur in 28%.

Another group includes crimes based on non-obviousness (situations when the initial information does not contain data on the commission of a crime by a specific person, that is, only the fact of committing a crime is known to the investigating authorities) – 72% of the total number of criminal proceedings (cases) studied. The investigation, in this case, is complicated due to the lack of information about the identity of the offender and the event of the crime, which requires simultaneous verification of several versions and a significant amount of intelligence-gathering measures. The distribution of investigative situations is related to the characteristic conditions that develop at the time of entering information in the URPI⁶. These conditions depend primarily on the characteristics of the sources of initial information about the crime and the awareness of interested parties about the state and prospects of the investigation.

Situation 1. The information was entered in the URPI⁷ and criminal proceedings were initiated (Article 214 of the Criminal Procedure Code of Ukraine⁸) based on materials provided by the State Tax Service of Ukraine (tax inspections), the State Financial Monitoring Service of Ukraine, or other authorised bodies based on the results of special inspections.

The peculiarity of this situation is that the initial information is collected as a result of conducting public verification activities and is contained in the materials:

¹Order of the Office of the Prosecutor General of Ukraine No. 298 “Regulations on the Unified Register of Pre-trial Investigations, the Procedure for Its Formation and Maintenance”. (2020, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0298905-20#Text>.

²*Ibidem*, 2020.

³*Ibidem*, 2020.

⁴*Ibidem*, 2020.

⁵*Ibidem*, 2020.

⁶*Ibidem*, 2020.

⁷*Ibidem*, 2020.

⁸Criminal Procedure Code of Ukraine. (2012, April). Retrieved from <http://zakon3.rada.gov.ua/laws/show/4651-17>.

- documentary check (planned, unscheduled, desk, or counter), during which signs of a crime were identified;
- inspections of the tax authority in case of detection of tax evasion;
- customs control (when detecting the movement of goods that do not correspond to the information reflected in customs and transport documents);
- received from the judicial authorities that considered claims in the order of economic proceedings;
- press reports and other official data indicating signs of a crime.

For example, in practice, there are such situations of receiving information about cases of fictitious export of inventory values to form a negative value of value-added tax in order to further reimburse it from the budget:

- the fact of fictitious export or non-compliance of actually exported goods with the data specified in customs clearance documents is revealed by customs officials at the stage of real or fictitious movement of goods and material values across the customs border of Ukraine;
- the fact of tax evasion is revealed during a desk or on-site audit conducted by tax authorities in connection with the provision of a tax return by the business entity;
- signs of a crime were identified after the tax authorities made a decision to transfer the corresponding amounts from the budget;
- signs of a crime were revealed as a result of a prosecutor's check of tax and other regulatory authorities [14].

The source of information on such facts of legalisation is the materials of the State Financial Monitoring Service of Ukraine, the State Audit Service of Ukraine and other bodies responsible for carrying out financial monitoring and identifying dubious financial transactions, and conducting inventory.

Situation 2. Criminal proceedings were initiated based on materials of intelligence-gathering activities of divisions of the Economic Security Bureau (tax police) and the National Anti-Corruption Bureau of Ukraine.

The source of information about the facts of receiving income of illegal origin and their legalisation is the materials of intelligence-gathering activities [21, p. 232], and the reason is materials collected by employees of operational services during intelligence-gathering activities. Such sources in this case are characterised by a significant amount of accumulated operational and procedural information about the circumstances of the crime, in particular, the method of committing the crime, the perpetrators, and channels for the sale/legalisation of funds obtained illegally.

This situation is the most favourable for investigation, since the intelligence-gathering nature of the check ensures the identification of sufficient circumstances of criminal activity and ensures surprise for the

subject of such activity, while simultaneously conducting a series of operational measures and investigative (search) actions. The materials of the pre-investigation audit collected by operational employees are previously discussed with investigators and tax specialists, which allows developing an agreed plan of investigative and operational measures. The success of implementing the results of the activities carried out depends, first of all, on the consistency and well-established interaction of all participants in the implementation of materials: operational employees, tax authorities, the bank, and experts.

As part of the intelligence-gathering activities, special messages can be received from employees of the business entity and regulatory authorities, operational observations, reviews of accounting documentation, preliminary research of tax and accounting documents, information from operational and specialised search engines and data banks can be obtained.

Situation 3. Criminal proceedings were initiated based on established facts on the basis of the materials of the investigation of other criminal offences.

The practice of pre-trial investigation bodies shows that there are signs of embezzlement of budget funds by tax evasion (Articles 212, 212¹ of the Criminal Code of Ukraine¹) can be detected during the investigation of other crimes in the sphere of economic activity (provided for in Articles 201, 205¹, 222 of the Criminal Code of Ukraine²), and official activities (Articles 364, 366 of the Criminal Code of Ukraine³). This may be the result of initiating unscheduled audit inspections, operational measures and investigative (search) actions [22, p. 254].

In support of the above, S.S. Cherniavskiy and O.Ye. Korystin note that “a characteristic feature of the already completed form of legalisation is too complex, confusing, and sometimes even inaccessible to verification mechanism for the generation of criminal funds that are legalised” [11].

Today, three typical investigative situations of the initial stage of investigation of crimes of this category are used. According to *the first scheme*, in the course of conducting intelligence-gathering activities, a criminal offence containing signs of legalisation of criminal illegal income from its commission was revealed; *the second one* – the fact of legalisation of criminal illegal income or a person who used the property in respect of which factual circumstances indicate its receipt by committing a predicate criminal offence to commit another criminal offence is revealed; *the third* – the fact of legalisation of tax funds is revealed, during the investigation of a crime under Article 209 of the Criminal Code of Ukraine⁴, measures are taken to establish the circumstances that preceded such legalisation, to identify individuals.

In these schemes, all episodes of criminal activity are sent to court within the same criminal proceedings [4].

¹Criminal Code of Ukraine. (2001, April). Retrieved from <http://zakon3.rada.gov.ua/laws/show/2341-14>.

²*Ibidem*, 2001

³*Ibidem*, 2001

⁴*Ibidem*, 2001

During the investigation of the legalisation (laundering) of property obtained as a result of tax evasion, tactical operations are carried out:

1. "State registration". It is carried out before entering information about a criminal offence in the URPI¹; it provides for a set of operational search measures aimed at identifying signs of a crime (requesting documents, interviewing persons, receiving explanations, surveillance (external, electronic);

2. "Document". This is a universal tactical operation, the priority of which is conditioned by the high probability of destruction or concealment of documents used in the commission of fictitious entrepreneurship in connection with the investigation of criminal proceedings. As part of this operation, audits of financial and economic activities are appointed, counter-inspections are organised, interrogations are conducted, searches are carried out, investigative inspections of documents are carried out, and technical and forensic examination of documents is performed;

3. "Straw man". It is carried out in cases when a citizen-founder, without the intention to carry out business activities under duress or for remuneration, registered an enterprise in their name, or a business entity established without the citizen's knowledge using their documents. By conducting interrogations, presenting for identification, it is found on whose initiative and for what purpose they did this, the terms of the agreement under which payment for participation in the creation of the enterprise was made, or the circumstances under which the passport was lost (in particular, the deceased citizen); conduct a technical and forensic examination of documents and a forensic psychiatric examination;

4. "Accomplice". It is carried out in an investigative situation when several persons – representatives of various business entities, having entered into a criminal conspiracy, carried out illegal activities under the guise of a fictitious enterprise. Attention is focused on the need to identify customers of illegal services. The goals of the operation are achieved by removing information from communication channels, establishing operational surveillance, promptly introducing it into a criminal group, conducting searches, interrogations, assigning inventories, audits, documentary checks, and forensic examinations;

5. "Search". It is a set of investigative (search) procedures and operational search measures, the task of which is to identify the person who is hiding. To do this, by conducting searches, interrogations and other actions, it is necessary: to collect information about the criminal (personal, family, business, financial); to establish the circle of persons who may have the wanted person; to check the places of their possible location;

6. "Ensuring compensation for material losses". During the implementation of this tactical operation, by conducting searches, interrogations, and a number of operational search measures, the presence and location

of property and funds in bank accounts belonging to the criminal are established, they are seized, and other measures are taken to ensure the safety of material values [22; 23].

One of the main tasks of the methodology for investigating the legalisation (laundering) of property obtained as a result of tax evasion is the development of standard systems (and subsystems) of investigator actions that reflect the most effective ways to solve a crime and contribute to choosing the optimal system of actions in criminal proceedings depending on the specific investigative situation. In this context, it should be noted that typical investigative situations depend on the spectrum of certain classification features.

At the same time, despite determining the optimal list of typical investigative situations, it is impossible to formulate universal investigative schemes applicable to any case, just as it is impossible to foresee the actions of criminals in advance. Thus, each specific situation of the investigation requires the investigator to be creative within the framework of criminal procedural regulation based on the generalisations of practice, theoretical provisions, and methodological recommendations formed in science.

Conclusions

Several classification groups of typical investigative situations are considered depending on:

1) quantity and reliability of data containing verification materials at the stage of entering information in the URPI;

2) procedural consequences of entering information in the URPI related to the identification of the person who committed the crime;

3) characteristics of sources of initial information about the crime, and the degree of awareness of interested parties about the progress and prospects of the investigation;

4) degree of validity and weight of the obtained evidence regarding the predicate crime.

At the same time, according to the latter classification group, the following varieties can be distinguished:

a) pre-trial investigation on the grounds of Article 209 of the Criminal Code of Ukraine was initiated simultaneously with the proceedings on a predicate crime;

b) pre-trial investigation was launched at the stage of charging for a predicate crime;

c) pre-trial investigation was initiated when a predicate crime case was at the trial stage.

At the stage of entering information about a criminal offence with signs of legalisation (laundering) of property obtained as a result of tax evasion in the URPI, the following typical situations are possible:

1) a criminal offence under Articles 212, 212¹ of the Criminal Code of Ukraine has been established, as a result of which criminal unlawful income was obtained through failure to pay taxes, which were subsequently used to put them into legal circulation;

¹Order of the Office of the Prosecutor General of Ukraine No. 298 "Regulations on the Unified Register of Pre-trial Investigations, the Procedure for Its Formation and Maintenance". (2020, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/v0298905-20#Text>.

2) unpaid tax funds were revealed, in respect of which factual circumstances indicate their receipt by committing a predicate criminal offence, and their transformation, transfer, acquisition, or use are aimed at concealing or masking their true origin;

3) dubious banking or financial transactions, conclusion of transactions that certify the commission of illegal actions aimed at legalisation (laundering) were identified, but there was no information about the predicate criminal offence.

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Типові слідчі ситуації початкового етапу розслідування легалізації (відмивання) майна, одержаного внаслідок ухилення від сплати податків

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Анотація

На підставі аналізу макроекономічної ситуації в Україні, кризових станів у цій сфері констатовано активізацію тіньового сектору національної економіки. Глобального масштабу набула його фіктивна складова, що полягає у виведенні значних фінансових коштів з легального економічного сектору протиправним шляхом, перерозподілі мільярдних прибутків на користь окремих суб'єктів підприємницької діяльності й відтоку капіталу за кордон, що визначає актуальність цього дослідження. Метою статті є встановлення типових слідчих ситуацій початкового етапу розслідування легалізації (відмивання) майна, одержаного внаслідок учинення податкового злочину. Для досягнення поставленої мети використано систему загальнонаукових і спеціальних методів дослідження, основними серед яких є компаративний, порівняльно-правовий, логіко-юридичний, статистичний і метод моделювання. Систематизовано типові слідчі ситуації (залежно від встановленої вихідної інформації, її характеру та специфіки щодо кількості й достовірності даних, що містять матеріали перевірки на стадії внесення відомостей до Єдиного реєстру досудових розслідувань; процесуальних наслідків внесення відомостей до Єдиного реєстру досудових розслідувань, пов'язаних із встановленням особи, яка вчинила злочин; характеристики джерел вихідної інформації про злочин, а також ступеня поінформованості зацікавлених осіб про перебіг і перспективи розслідування; ступеня обґрунтованості й обсягу зібраних доказів щодо предикатного злочину) та запропоновано напрями розслідування й алгоритм проведення процесуальних дій, притаманних кожному етапу за різних слідчих ситуацій. Доведено, що слідчі ситуації на початковому етапі впливають на визначення завдань розслідування легалізації (відмивання) майна, одержаного внаслідок ухилення від сплати податків: встановлення події, способу та предмета кримінального правопорушення; виявлення та викриття осіб, які його вчинили; визначення характеру та розміру завданої кримінальним правопорушенням шкоди; виявлення та процесуальне закріплення слідів злочину; встановлення зв'язків ухилення від сплати податків з іншими правопорушеннями; виявлення причин та умов, які сприяли вчиненню протиправних діянь (з правовим реагуванням на їх усунення). Одержані результати дослідження сприятимуть оптимізації початкового етапу розслідування злочинів зазначеної категорії, усуненню загроз економічній безпеці держави, пов'язаних зі сферою оподаткування

Ключові слова:

податковий злочин; економічна безпека; кримінальне провадження; тіньова економіка; слідча (розшукова) дія